(1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION.NO.3678 OF 2004

BETWEEN

Vinod Acharya s/o Shri Manik Lal Acharya, aged about 55 years, Occup.- Service, Posted as Assistant Manager Food Corporation of India, District office Link Raod Bilaspur, R/o. Near Dayal Band Gurudwara Bilaspur (C.G.)

PETITIONER

AND

1- Food Corporation of India,
Through the Zonal Manager (West)
Mumbai (Maharashtra)

2- The Senior,Regional Manager,
Food Corporation of India Regional office
Telibandha Ring raod Tigadda Raipur,
Distt.- Raipur (C.G.)

3- The District Manager,
Food Corporation of India,
Link Raod Bilaspur (C.G.)
Managing Director,

P.R. No. 3704/04 Sumit Shiv
Presented by Shri.....
dated.....05/7/04

RESPONDENTS

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

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A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3501 of 2004

P.R.K. Rao
- Versus -
Food Corporation of India & others

Writ Petition No.3842 of 2004

D.P. Rajput
- Versus -
Food Corporation of India & others

Writ Petition No.4059 of 2004

Manharan Lal Gupta
- Versus -
Food Corporation of India & others

Writ Petition No.3678 of 2004

Vinod Acharya
- Versus -
Food Corporation of India & others

Writ Petition No.4104 of 2004

Nilkanth Pd. Sharma
- Versus -
Food Corporation of India & others

Writ Petition No.4429 of 2004

Ram Avtar Sharma
- Versus -
Food Corporation of India & others

POST FOR ORDERS ON 11TH MAY, 2005

Sd/-
L.C. Bhadoo
Judge

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HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

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- Versus -
Food Corporation of India & others

Writ Petition No.4104 of 2004

Nilkanth Pd. Sharma
- Versus -
Food Corporation of India & others

Writ Petition No.4429 of 2004

Ram Avtar Sharma
- Versus -
Food Corporation of India & others

Present: -

Shri Rajeev Shrivastava, Advocate:	For petitioner in W.P. No.3842/04.
Shri P.S. Koshy, Advocate:	For petitioner in W.P. No.4429/04.
Shri Vinay Pandey, Advocate:	For petitioner in W.P. No.3501/04.
Shri Yogesh Pandey, Advocate:	For petitioners in W.P. No.4059/04, 3678/04 & 4104/04.
Shri Kishore Bhaduri, Advocate:	For the respondents.
Shri B.P. Gupta, Advocate:	For the respondents in W.P. No.4429/04.

O R D E R

(Passed on 11th May, 2005)

Before Hon'ble Mr. L.C. Bhadoo, J.

1. Writ Petition No.3842/2004 filed by D.P. Rajput, who was working as Assistant Manager in the Food Corporation of India,

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Writ Petition No.4429/2004 filed by Ramavtar Sharma, who was working as Assistant Grade-I (D) in the Food Corporation of India, Writ Petition No.3501/2004 filed by P.R.K. Rao, who was working as Assistant Manager (Q.C), in the Food Corporation of India, Writ Petition No.3678/04 filed by Vinod Acharya, who was working as Assistant Manager (Q.C) in the Food Corporation of India, Writ Petition No.4059/2004 filed by Manharan Lal Gupta, who was working as Assistant Grade-III (Depot) and Writ Petition No.4104/2004 filed by Nilkanth Pd Sharma, who was working as Assistant Grade-II (D) in the Food Corporation of India are being disposed of by this common order as in all these writ petitions the interpretation of Voluntary Retirement Scheme floated by the respondent-Corporation vide Circular No.EP-01-2004-16 dated 29.6.2004 is involved.

2. The petitioners' case in these writ petitions is that the respondent-Corporation floated a Voluntary Retirement Scheme for its employees vide its Circular No.EP-01-2004-16 dated 29.6.2004 and time period of that scheme was three months i.e. from 29.6.2004 to 29.9.2004. In the first instance, the petitioners, who were the employees of the respondent-Corporation, submitted their applications seeking voluntary retirement in pursuance of the said scheme. However, later on the petitioners submitted applications for withdrawal of their applications seeking voluntary retirement, but respondent-Corporation did not accept the same, on the other hand accepted their applications for voluntary retirement. Therefore, the petitioners have questioned the legality, propriety and validity of the orders of respondent-Corporation whereby the respondent-Corporation accepted the voluntary retirement applications of the

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petitioners' inspite of the fact that same were withdrawn by them. Therefore, the question involved in these petitions is that whether the action of the respondents-Corporation not permitting the petitioners to withdraw their applications for seeking voluntary retirement is illegal and arbitrary.

3. Brief facts leading to filing of these writ petitions are that in order to achieve man-power rationalization with a view to minimizing the cost of Food Corporation of India, the Corporation had launched the Voluntary Retirement Scheme vide Annexure P-1 dated 29.6.2004. Sub-para (2) of Para 1 of the Preamble of the scheme envisages that:

> *"The Corporation will have the right not to grant voluntary retirement to any of officers/officials for the reasons to be recorded in writing."*

In sub-para (3) of Para (1) it was made known to the employees of the respondent Corporation that:

> *"the scheme will be in operation for a period of three months from the date of issuance of circular and the Corporation will have right to accept the requests for voluntary retirement on the principle of 'first come first served' basis. The scope of the scheme was that it was open to the permanent employees of the Corporation i.e. Direct recruits, Food Transferees, who have opted either for Central Govt. pensionary benefits or for FCI retrial benefits and to the absorbed deputationists."*

As to the eligibility, it was made clear that:

> *"only permanent employees of the Corporation will be eligible and they may seek voluntary retirement by giving three months notice in writing to the competent authority within the prescribed limit. However, the competent authority was entitled to make the payment of notice period of three months*

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or for the remaining period of notice period and was entitled to accept the request for voluntary retirement from any date before the date of expiry of notice period."

In sub-para (3) of Para-4 of the eligibility criteria it was made clear that:

"Applications for voluntary retirement would be examined with reference to the pending disciplinary proceedings etc., if any, against the employees. The request for voluntary retirement would be considered keeping in mind the circumstances of each case with a view to ensure that it is extended to such employees whose services could be dispensed without detriment to the Corporation. Care shall be taken to ensure that highly skilled and qualified officers and staff are not given the option. Further, voluntary retirement could be denied where departmental proceedings have been initiated or are contemplated or where the prosecution is either contemplated or has actually been launched against the employee concerned."

Para-7 of the scheme relates about the competent authority, envisages that;-

"the appointing authorities for the purpose of above Scheme would be the authorities to accept or reject an application for Voluntary Retirement."

Para-8 relates to the procedure and sub-para (a) of Para-8 envisages that;

"an eligible employee may submit an application for voluntary retirement under this scheme to the competent authority through proper channel in the prescribed proforma."

Sub-para (b) of Para-8 envisages that:

"the voluntary retirement of the employee under this scheme would be subject to vigilance clearance."

Sub-para (c) of Para-8 envisages that;

"the scheme does not confer any right on any employee to have his request for voluntary retirement accepted. The Corporation will have full discretion to accept or reject the request for voluntary retirement of any employee, keeping in view the service record, organizational requirement and any other relevant factors in this regard".

Sub-para (d) of Para-8 envisages that;

"once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is not open to the employees to withdraw the same. The competent authority within notice period (3 months) shall take the decision to accept or reject the request and shall communicate the same to the official concerned."

Later on, a further clarification was issued on 22.9.2004 in which it has been mentioned that regarding scheme for voluntary retirement issued vide Circular No.EP-01-2004-16 dated 29.6.2004 which provides that once an employee volumite his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it would not be open to employee to withdraw the same, headquarters have received representations from trade Unions etc. requesting for modification of the said provision so as to allow the employees to withdraw their requests for voluntary retirement in the wake of change in their circumstances and the said representations have been examined in consultation with Legal & Finance Divisions and the competent authority has decided that though the Scheme does not permit withdrawal of an application for voluntary retirement, yet the discretion always would rest with the competent authority to accept or reject such an application. All the authorities are accordingly advised to decide the applications

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for withdrawal of voluntary retirement. Requests on these lines, on case-to-case basis.

Therefore, by this circular considering the demand of trade Unions a relaxation to certain extent was given in sub-para (d) of Para-8 of the scheme in question whereby in the first instance it was made known to every employee that once an employee submitted his application for voluntary retirement that shall be treated as final and it is not open to the employee to withdraw the same. But the employees were allowed to make an application for withdrawal of their applications seeking voluntary retirement. However, discretion was left with the competent authority to accept or reject such withdrawal application. It was further added that the authority concerned would decide the withdrawal of voluntary retirement request case to case basis.

4. Learned counsel for the petitioners placing reliance on the decision of the Hon'ble Apex Court in the matter of **Bank of India and others Versus O.P. Swarnakar and others** reported in **(2003) 2 Supreme Court Cases 721** argued that in view of the decision of the Hon'ble Apex Court even in the existence of sub-para (d) of Para-8 of the scheme the petitioners were entitled to withdraw their offer for voluntary retirement before the same was accepted and in this matter the petitioners had moved applications for withdrawal of their offer for voluntary retirement before the same was accepted, therefore, the respondent-Corporation ought to have accepted their withdrawal applications and allowed them to continue in services. As such, the impugned orders rejecting the petitioners' prayer for withdrawal of voluntary retirement and accepting their voluntary retirement was unjustified, same is arbitrary and liable to be quashed. They

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further argued that in view of relaxation given by Circular Dated 22.9.2004 the petitioners' request for withdrawal ought to have been accepted.

5. On the other hand, Shri Kishore Bhaduri & Shri B.P. Gupta, learned counsel for the respondent-Corporation argued that in the first instance the petitioners have not challenged the legality & validity of the scheme, therefore, the petitioners are bound by the scheme itself and so long the relevant paras of the scheme are not quashed the writ petitions are not maintainable. Second argument advanced by learned counsel for the respondent-Corporation is that since the scheme floated by the respondent-Corporation was a contract, the petitioners made offer in respect to the invitation of the respondent and that was accepted by the respondent Corporation therefore, dispute relates to the contractual matter and in contractual matters writ of mandamus cannot be issued. Counsel for the respondents-Corporation further argued that since it was made clear to the employees at the time of floating the scheme that once the application for voluntary retirement is moved, the employees shall not be entitled to withdraw the same. Therefore, as per sub-para (d) of Para 8 of the scheme the petitioners were not entitled to seek withdrawal of their applications for voluntary retirement. They also submitted that even the clarification issued later on does not give any right to the petitioners to withdraw their voluntary retirement applications, as the discretion was left with the competent authority to consider the withdrawal application. However, the respondent authority was not bound to accept the application for withdrawal of voluntary retirement application. The authority was required to take the decision case-to-case basis and they took the

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decision, therefore, the petitioners were not entitled to claim any benefit even of the letter of clarification, as the sole discretion was with the competent authority.

6. Shri Gupta, counsel for respondent-Corporation in W.P. No.4429/2004 placing reliance on the decision of the Hon'ble Apex Court in the matter of **Balram Gupta Vs. Union of India and another** reported in **AIR 1987 SUPREME COURT 2354** argued that the petitioner was not entitled to withdraw his application for seeking voluntary retirement.

7. Having heard learned counsel for the parties, having perused the records and having considered the relevant provisions of scheme extracted in the earlier part of this order, if we look into the relevant provisions of sub-para (d) of Para-8 of the scheme in question whereby the petitioners were made known that once they submitted their applications for voluntary retirement to the competent authority, it shall be treated as final and it is not open to the employee to withdraw the same. If we also look into the provisions of Voluntary Retirement Scheme of the Nationalized Banks which was under consideration in O.P. Swarnkar's case before the Hon'ble Apex Court, Para 10.5 of the scheme of nationalized banks envisages that;

> *"it will not be open for an employee to withdraw the request made for voluntary retirement under the Scheme after having exercised such option."*

Accordingly, sub-para (d) of Para-8 of the scheme in question and Para 10.5 of the Nationalized Banks Voluntary Retirement Scheme are paramateria and in that case the Hon'ble Apex Court after considering the provisions of Section 5 of the Contract Act and the scheme held that the employees were

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entitled to withdraw their offer seeking voluntary retirement before the same was accepted provided they have not accepted any part of the benefit under the Scheme. In para 74 of the judgment the Hon'ble Apex Court held that:

> "... *the voluntary scheme was not a proposal or an offer but merely an invitation to treat and applications filed by the employees constituted an "offer" and once the application filed by the employees is held to be an "offer", Section 5, in absence of any other independent binding contract or statute or staturoty rules to the contrary would come into play.*"

In the above judgment the Apex Court held that there was difference between the Voluntary Retirement Scheme framed by State Bank of India on one hand and the Voluntary Retirement Scheme framed by nationalized banks on the other. The difference in the two schemes was that in the case of SBI voluntary retirement scheme, an opportunity of fifteen days was given to the employee-applicant to withdraw from the scheme whereas under the voluntary retirement scheme of the nationalized banks no such opportunity was given. In the case of voluntary retirement scheme framed by nationalized banks, Para 10.5 stipulated that it will not be open for an employee to withdraw his request for voluntary retirement after having exercised such option. In the circumstances, the Court took the view that the case of State Bank of India stood on different footing vis-à-vis schemes framed by other nationalized banks. The Court in Paragraph 92 of its decision held that:

> "92. However, the case of the State Bank of India stands slightly on a different footing. Firstly, the State Bank of India had not amended the scheme. It, as noticed hereinbefore, even permitted withdrawal of

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> the applications after 15th February. The scheme floated by the State Bank of India contained a Para (Para 7) laying down the mode and manner in which the application for voluntary retirement shall be considered. The relevant Para as referred to hereinbefore creates an enforceable right. In the even of State Bank failed to adhere to its preferred policy, the same could have been specifically enforced by a court of law. The same would, therefore, amount to some consideration"

8. Whereas, in the case of nationalized banks where there was no provision to withdraw, the withdrawal must be effected prior to acceptance by the Bank. Therefore, in the terms of the ratio laid down by the Apex Court, the employee is ensured under SBI VRS the right of withdrawal within the specified period. It was held in this case that the scheme of SBI VRS is an invitation to offer. In the case of **State Bank of Patiala Vs. Romesh Chander Kanoji and others** reported in **(2004) 2 Supreme Court Cases 651** while considering the scope of above judgment of O.P. Swarnkar (supra) the Hon'ble Apex Court held that 'State Bank of Patiala Voluntary Retirement Scheme is an invitation to offer and not an offer' and Para-5 of the said Voluntary Retirement Scheme inter-alia states that scheme will remain open during the period 15.2.2001 to 1.3.2001 whereas Rule 8 thereof provides for mode of acceptance by the management. It is in the light of Rules 5 and 8 that one has to read Para (9)(i) which provides for general conditions and under which it is provided that application once made cannot be withdrawn. In *Chitty on Contracts* (28th Edn., p. 125), the learned author states that:

> *"an offer may be withdrawn at any time before it is accepted. That this rule applies even though the offeror has promised to keep the offer open for a*

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specified time, for such a promise is unsupported by consideration."

Therefore, Para (5) of SBP VRS gives locus poenitentiae to the employee to withdraw by 1.3.2001 after which the mode of acceptance contemplated by Para (8) of SBP VRS would apply and the bank will proceed to vet the applications. As stated above, the Bank needs time to ascertain its liability; it is required to find out the cost of creation of a separate fund which in turn depends on the number of applications and if the employees are permitted to withdraw after the date of closure it would be impossible for the Bank to implement the scheme. Therefore, Para (5) gives time to the employee to withdraw by 1.3.2001 and the bank is given time of two months thereafter to complete the designated mode of acceptance. Reading Paras (5), (8) and (9) (i) it is clear that employees are precluded from withdrawing from SBP VRS after the closure of the scheme on 1.3.2001.

9. In this background, if we look into the provisions of the scheme in question floated by the respondent-Corporation, the object of the scheme was to achieve the man-power rationalization with a view to minimizing the establishment cost of Food Corporation of India, the scheme was for the period of three months i.e. from 29.6.2004 to 29.9.2004. Therefore, in this case also, as has been held by the Hon'ble Apex Court in the matter of State Bank of Patiala's case, the respondent-Corporation on filing of the applications by its employees within the prescribed time period of scheme was required to create fund and creation of fund depends on the number of applications; cost of the scheme; liability which the scheme would impose on the Corporation and such other factors. Therefore, in view of the above law laid by the Hon'ble

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Apex Court the petitioners herein were entitled to withdraw their applications for voluntary retirement before the expiry of the scheme period i.e. 29.9.2004. Withdrawal application made thereafter was not valid for the reasons that at the end of time period of scheme the Corporation was required to consider all the applications and to create fund for payment under the voluntary retirement scheme, as such none of the employee was entitled to withdraw his application for voluntary retirement after expiry of the time period given in the scheme meaning thereby the employees were entitled to withdrawn their voluntary retirement applications upto 29.9.2004 or before the acceptance of their applications for voluntary retirement, whichever was earlier in time, as the case may be and thereafter, they were precluded from withdrawing their applications.

10. Further if we look into the sub-para (2) Para No.4 of the scheme in question regarding eligibility criteria, which makes it clear that any employee may seek voluntary retirement by giving three months notice in writing to the competent authority within the prescribed limit and the competent authority was authorized to make the payment of notice period of three months or for the remaining period of notice period and may accept the request for voluntary retirement from any date before the date of expiry of notice period. In such circumstances, the employee seeking voluntary retirement was required to make an application for withdrawal of the application seeking voluntary retirement within the prescribed time period of scheme i.e. before expiry of time of the scheme or acceptance of their voluntary retirement applications so as to enable the Corporation to assess how many persons are to be allowed to seek voluntary retirement because as

per above clause the authority was required to take decision by the last date of scheme regarding acceptance of voluntary retirement application or before acceptance of application for voluntary retirement, whichever was earlier in time, as the case may be. As per sub-para (2) of Para 4 of the scheme the authority was entitled to accept the application even before the expiry of notice period by ordering for payment for notice period, as the discretion was left with the authority. Therefore, in view of the judgment of the Hon'ble Apex Court in the matters of O.P. Swarnkar & State Bank of Patiala (supra) the petitioners were entitled to seek withdrawal of their voluntary retirement, however, within the time period of the scheme and not thereafter or before the acceptance of their applications for voluntary retirement whichever was earlier in time, as the case may be.

11. Now coming to the point raised by learned counsel for the respondent-Corporation that the validity of the scheme has not been challenged, therefore, all these writ petitions are liable to be dismissed. Similar point was raised in the case of O.P. Swarnkar (supra), but the same was negativiated by the Hon'ble Apex Court in Paragraph No.121 of the judgment and it was held that:

> "..... The writ petitioners filed the writ petitions, inter alia, questioning the validity of the Scheme. In any event validity of Para 10.5 of the said Scheme was in question. The appellants herein are "State" within the meaning of Article 12 of the Constitution of India. . The questions raised by the writ petitioners thus could be raised in a proceeding under Article 226 of the Constitution of India. Furthermore, in the event it be held that the action of the appellants was arbitrary and unreasonable, the same would attract the wrath of Article 14 of the Constitution of India. Furthermore, the right of the employee to continue

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in employment, which is a fundamental right under Article 21 of the Constitution of India could not have been taken away except in accordance with law. The decision of this Court in *Har Shankar v. Dy. Excise and Taxation Commr.* is not apposite. In that case, this Court was concerned with the question as to whether enforcing the terms and conditions of a contract of supply of liquor which is a privilege would be permissible in a writ proceeding. In the aforementioned situation, the writ was held to be not maintainable. Such is not the position herein."

12. Apart from that if we look into the judgment of the Hon'ble Apex Court's in O.P. Swarnkar's case we find that in that case also before the Punjab & Haryana High Court the legality and validity of voluntary retirement scheme of nationalized banks was questioned, whereas before other High Courts the legality and validity was not challenged, even then the Court held that Para 10.5 of the scheme was inoperative as the employees have indefeasible rights to withdraw their offer before the same is accepted. Therefore, in view of the above it would not be necessary for the petitioners to challenge the validity and constitutionality of the scheme in question and without challenging the same, if the action of the respondent is found arbitrary, unreasonable, irrational and not consistent with the scheme, the court is entitled to declare the same inoperative, as the employees have indefeasible rights to withdraw their offer before the same is accepted. In these cases vide circular dated 22.9.2004 the employees were allowed to withdraw their applications seeking voluntary retirement, however, discretion was left with the authority. Therefore, even without challenging the validity of the provisions of scheme the petitioners are entitled to challenge the decision of authority where the rejection of

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application for withdrawal of voluntary retirement application was not passed in a considered manner and same was arbitrary, irrational and unreasonable.

13. As far as the decision of Balram Gupta (supra) relied upon by learned counsel for the respondent-Corporation is concerned, the Hon'ble Apex Court while considering the said judgment in O.P. Swarnkar's case in Paragraph Nos.102 & 103 held that:

> *"the court was dealing with the Central Civil Services (Pension) Rules, 1972 which is a statutory rule. Sub-rule (4) of Rule 48-A prevented withdrawal of resignation letter except with the approval of the authority. The validity of the said Rule was not in question'* and further held that *"issue involved therein stood on different footing and this court made a mere observation to the following effect that it may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme and reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not."*

In this case validity is not in question and the bar of withdrawing the resignation was contained in the statutory rule and, thus Section 5 of the Indian Contract Act would not have been applicable in that case. Therefore, the case law cited by learned counsel for the respondents is not applicable in the present case.

14. In the light of above, if we look into the individual case of the petitioner herein namely Shri Ram Avatar Sharma in W.P. No.4429/2004, he submitted application for voluntary retirement on 7.7.2004 and thereafter, he submitted withdrawal application

on 30.9.2004 (Annexure R-2) to the Senior Regional Manager, whereas the last date of the scheme was 29.9.2004 and vide Annexure P-5 dated 30.9.2004 the application of the petitioner Ram Avtar Sharma for voluntary retirement was accepted w.e.f. 8.10.2004. Therefore, for the reasons that the application for withdrawal of voluntary retirement application was filed on 30.9.2004 i.e. after expiry of three months period of the scheme and in the second place by the date the withdrawal application was filed, the application of the petitioner for voluntary retirement was already accepted vide order dated 30.9.2004 (Annexure P-5). So far as the contention of learned counsel for the petitioner that application for withdrawal was already filed on 25.9.2004 (Annexure P-4) but the same has been denied by the respondents, perusal of Annexure P-4 shows that there is no endorsement of any authority of the respondents regarding filing of the application by the petitioner on that date, however, Annexure R-2 filed by the respondents on 30.9.2004 is dated 25.9.2004 submitted by the petitioner for withdrawal of the voluntary retirement application and on that application there is an endorsement that same was submitted on 30.9.2004. Therefore, the contention of learned counsel for the petitioner that the application for withdrawal was submitted on 25.9.2004 cannot be accepted for the above reasons, as the petitioner had not filed application for withdrawal of voluntary retirement application within the period of scheme. Accordingly, I do not find any substance in this writ petition, same is liable to be dismissed and it is hereby dismissed.

15. Now coming to the writ petition No.3842/2004 filed by D.P. Rajput. The petitioner herein submitted the application for

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voluntary retirement on 3.7.2004, he moved for withdrawal of his application for voluntary retirement on 18.8.2004 (Annexure P-5) and thereafter, he again moved an application for withdrawal of voluntary retirement application on 24.9.2005 (Annexure P-7), thereby the petitioner moved two applications before the expiry of the scheme period. As such he had moved the application for withdrawal within the time, therefore, the order of the respondent-Corporation dated 1.10.2004 (Annexure P-10) whereby the application of the petitioner for voluntary retirement was accepted is held to be illegal and arbitrary, same is liable to be quashed and it is hereby quashed. Respondents are directed to take back the petitioner in service. It was made clear by counsel for the petitioner during the arguments that the petitioner has not accepted any benefit under the voluntary retirement scheme, therefore, the petitioner is entitled for all the consequential benefits.

16. Now coming to Writ Petition No.3501/2004 filed by petitioner P.R.K. Rao. The petitioner moved application on 22.7.2004 for seeking voluntary retirement, he submitted application for withdrawal of same on 22.9.2004 i.e. before the expiry of the scheme period. However, his application for voluntary retirement was already accepted on 31.8.2004 by ordering for making payment of notice period as per Para 4 of the scheme, even the petitioner accepted the cheque of retrial benefits. As the petitioner's application for voluntary retirement was already accepted before the application for withdrawal was filed, therefore, in view of the decision of the Hon'ble Apex Court in the matter of O.P. Swarnkar's case, the petitioner's petition has

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no merit, same is liable to be dismissed and therefore, it is dismissed.

17. As far as the writ petition No.3678/2004 filed by petitioner Vinod Acharya is concerned, the petitioner submitted application for voluntary retirement on 9.7.2004 (Annexure P-4), he withdrew the application for voluntary retirement vide application dated 12.7.2004 (Annexure P-5) well within the scheme period, however, respondent accepted his application for voluntary retirement vide order dated 27.9.2004 (Annexure P-1). Therefore, in view of the above principle, the order accepting the voluntary retirement application dated 27.9.2004 (Annexure P-1) is hereby quashed and as the petitioner has already obtained stay in his favour by this Court for continuing in service, therefore, he will allowed to continue in service.

18. As far as the W.P. No.4059/2004 filed by petitioner Manharan Lal Gupta is concerned, the application for seeking voluntary retirement was filed by the petitioner on 25.9.2004, withdrawal application was filed by him on 6.10.2004 and application of voluntary retirement was accepted on 26.10.2004. As the petitioner had not filed any application for withdrawal of the voluntary retirement application within the period of scheme i.e. upto 29.9.2004, as the same was filed after seven days from the date of closure of the scheme, therefore, the acceptance of the application of the petitioner for voluntary retirement is valid, petition of the petitioner is liable to be dismissed and accordingly, it is hereby dismissed.

19. As far as the W.P. No.4104/2004 filed by petitioner Nilkanth Prasad Sharma is concerned, the application for

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voluntary retirement was filed by the petitioner on 24.9.2004 and withdrawal application was filed on 29.9.2004 i.e. on the last date of scheme period. Since the petitioner had filed the withdrawal application on the last date of the scheme period, the respondents ought to have allowed the petitioner in service, but the respondents had accepted the application of the petitioner for voluntary retirement on 21.10.2004. Therefore, the order accepting the voluntary retirement application of the petitioner dated 21.10.2004, even after filing of the withdrawal application by the petitioner within time, is illegal and inoperative qua the petitioner and same is liable to be quashed and accordingly, it is hereby quashed. It has been argued by learned counsel for the petitioner that the petitioner has not taken any benefit of voluntary retirement scheme.

20. In the result, Writ Petition Nos. 3501/2004, 4429/2004 & 4059/2004 are dismissed and Writ Petition Nos. 3842/2004, 3678/2004 & 4104/2004 are allowed in terms of the above order.

Sd/-
L.C. Bhadoo
Judge

Roshan/-